IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CONTEMPT APPEAL NO. 6 OF 2002.
IN
CONTEMPT PETITION NO. 340 OF 2000

1. F. Rajagopalan, Hon. Chairman,]
   Powai NITIE Gardens Cooperative]
   Housing Society Limited, having]
   their Office at Adi Shankaracharya]
   Marg, Rambaug, Powai, Bombay-76.]

2. J.G. Aarolkar, Hon. Secretary,]
   Powai NITIE Gardens Cooperative]
   Housing Society Limited, having]
   their Office at Adi Shankaracharya]
   Marg, Rambaug, Powai, Bombay-76.] .. Appellants
   (Ori. Respdt. Nos.1 & 2)

Versus

1. D.B. Pacharne,]
   residing at 9/77, Nirbhavne Chawl,]
   Wihariyali Village, Vikhroli (West),]
   Mumbai – 400 087.]

2. STATE OF MAHARASHTRA,]

through its Law & Judiciary]
Department, Mantralaya, Mumbai-32.] .. Respondents (Ori. Petnr. & Respdt.No.3)

Mr. C.J. Sawant, Sr. Advocate, i/b A.M. Nathani, Tanu Mehta Tiwari for the appellant.

Mr. Tejas Deshmukh with Mr. A.A. Kumbakhoni for respondent No.1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, J.

DATED: 16TH AUGUST, 2004.

ORAL JUDGMENT: *[Per F.I. Rebello, J.]*

1. This Appeal is directed against the order of the learned Single Judge dated January 28, 2002, whereby the appellants herein have been found guilty of contempt and directed to suffer imprisonment in a civil prison for three days. This order is the subject matter of the present Appeal. A few dates may be noted for the purpose of finding out as to whether the contention of the appellants that on the facts disclosed, they are not guilty and also whether the unconditional apology a genuine regret, as set out in the course of the appeal Memo in paragraph "(p)".

2. On 16th February 1996, on the interim application moved by the respondent No.1, the following order was passed:

> *"In the meanwhile, you, your agent and representatives are hereby directed until further orders to keep any one Flat of 500 sq. ft. (built up area) vacant, without allotting and/or giving possession of the same to any other member until disposal of the dispute."*

Thereafter, by judgment and order dated 26th August 1996, the dispute itself was dismissed and the ad-interim injunction vacated. An application for stay was made on that very day, which was also dismissed on 26th August, 1996. Thereafter, the Appellate Court by order of 10th October 1997 allowed the Appeal and remanded the matter back to the trial court for framing issues and recording evidence along with the issue of jurisdiction. There was no interim relief granted by the Appellate Court nor was any other order passed directing continuance of the interim relief earlier granted by the Court during the pendency of the proceedings before the trial court.

3. On 6th March 1998, however, the trial court noted that the Appellate Court has allowed the Appeal and as such observed that the ad-interim injunction granted on 16th February 1996, revived automatically and hence the said injunction

shall be continued till the final hearing of the main dispute. On an application moved to set aside the order of injunction, by order of 10th February 2000, the trial court was pleased to vacate the order of injunction. The dispute is still pending. The order of 10th February 2000, considering paragraph 4, cannot be said to be disposal of the dispute considering the terms of remand by the Appellate Court for fixing issues and recording evidence. It was, at the highest, an application for vacating interim relief.

4. The respondent No.1, thereafter moved this Court by way of contempt proceedings on 31st August 2000 contending that the appellants were in contravention of the orders of the Court dated February 16, 1996, read with the order dated 6th March 2000 (1998) and order dated February 10, 2000 passed by the same Court. Another aspect of the matter, which has came on record, is that two flats which, according to the respondent No.1, the appellants had parted with and they were guilty of contempt, were reserved for MHADA who had permitted, according to the appellants, the builder to dispose of the same in view of certain facilities provided in the building. The appellants only have made allotment to the said two persons in whose favour the flats were transferred by the builder pursuant to approval passed by MHADA. This is set out with a view to consider the apology tendered. Whether the appellant could issue letter of allotment is left open for consideration when the dispute is finally decided.

5. The learned Single Judge basically proceeded on the footing that though the two flats were reserved for MHADA, allotment of the flats was to be done by the society. The 28th flat was allotted to Shri Mahashabde and allotment letter was issued by the society on 4/4/1988 and the 29th flat was allotted to one stranger Mr. J.F. Datar, being Flat No.A-303 of 400 sq. ft.

6. As noted earlier, it is only on 6th March 1998 that the trial court proceeded on the footing that by remanding the matter, the ad-interim order of injunction stood revived. Therefore, the contempt, if any, will only arise if it can be held that there was an ad-interim order on 6th March 1998. It is true that the order of 6th March 1998 was not challenged in the Appeal by the appellants, but they did move for vacating the order which was thereafter vacated on 10th February 2000. Even therefore, *prima facie* and technically, there may have been a breach of the order of 6th March 1998, yet really speaking, the assumption drawn by th trial court that by the order of remand of 10th October 1997, the ad-interim order stood revived was completely erroneous. The order must be construed as it read. That order was only an order of remand, remitting back the matter to the trial court in terms set out therein. The Appellate Court had not granted any injunction nor directed continuance of any injunction pending the matter before the learned trial court.

7. Apart from that, before the trial court the appellants had tendered an unconditional apology, which the learned Single Judge, considering the facts and circumstances, did not accept. The apology in writing has since again been made before this Court, as earlier set out in paragraph (p) of the Appeal Memo. We find that the apology is genuine. We accept the unconditional apology.

6. Considering the above, the impugned order of the learned Single Judge dated January 28, 2002, is set aside. The Appeal is accordingly disposed of.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]